



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/22/04	Bill No:	AB 2858
Tax:	Munitions	Author:	Ridley-Thomas
Board Position:		Related Bills:	

BILL SUMMARY

This bill would impose a 10% fee upon munitions sold at retail and a 5% fee upon handguns sold at retail.

Summary of amendments

The April 22 amendments clarify: 1) that the proposed fee would be imposed upon the retailer; 2) the exemption for peace officers would include handgun purchases by the peace officer or any government agency purchasing handguns or munitions on behalf of a law enforcement agency; and 3) reimbursement of Board costs would be limited to 10 percent of the fee revenue. Additional amendments include technical changes suggested in the previous Board staff analysis.

ANALYSIS

Current Law

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including munitions and handguns. Currently, the total combined sales and use tax rate is between 7 ¼ percent to 8 ½ percent, depending on the location in which the merchandise is sold. The Board does not collect any additional taxes or fees on the sale or use of munitions and handguns.

The Department of Justice administers a fee imposed on gun sales. The Dealer Record of Sale (DROS) fee is imposed on gun purchasers and collected by the selling dealer. The fee is currently \$14, and is used to cover the costs of mandatory background checks. There is also a required \$1.00 Firearms Safety Testing fee and a \$5.00 Safety and Enforcement fee imposed on gun sales.

Proposed Law

This bill would add Chapter 2.8 (commencing with Section 12330) to Title 2 of Part 4 of the Penal Code to impose a fee as follows:

- 10 percent of the retail sales price for each munition sold at retail on or after January 1, 2005, or purchased outside this state that are intended to be stored or used in this state.
- 5 percent of the retail sales price for each handgun sold at retail on or after January 1, 2005.

This bill would provide an exemption from the proposed fee for the following:

- Any munition or handgun purchased by any peace officer required to carry a firearm while on duty, or by any governmental law enforcement agency employing that

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officer or any government agency purchasing on behalf of the law enforcement agency, for use in the normal course of employment.

- Ammunition sold to any person holding a valid California hunting license that is purchasing ammunition intended to be used in a rifle or shotgun.
- A transaction conducted pursuant to Section 12082 or 12084 in order to comply with subdivision (d) of Section 12072. These sections refer to private party handgun sales that require the assistance of a licensed firearms dealer (Section 12082) or a law enforcement agency (Section 12084).
- A transaction that complies with an exemption from the requirements of subdivision (d) of Section 12072. Such exemptions include gun buy back programs, transfers by government agencies to museums, transfers between licensed importers, gift to immediate family members, or short term loans to a known person.
- A transaction conducted pursuant to paragraph (2) of subdivision (f) of Section 12072. This provision requires any person who imports a handgun into this state to either report the information about the firearm and the owner to the Department of Justice or transfer or sell the firearm to another individual, licensed firearms dealer, or sheriff or police department.

This bill provides the following definitions for key terms:

- “Munition” means either a finished munition product consisting of a projectile with its fuse, propelling charge, or primer, or a primer component, as applicable. “Munition” does not include a BB or pellet commonly used in an air rifle or pistol, or blank munitions which lack a projectile.
- “Handgun” means a handgun, as defined in Section 12001, that is on the approved list pursuant to Section 12131.

This bill would require that the proposed fee be administered by the Board pursuant to the Fee Collection Procedures Law. All amounts required to be paid would be paid to the Board in the form of remittances that are payable to the Board and are separate from the remittance of any other tax. Fees would be due to the Board on a quarterly basis on or before the last day of the month following the quarter. Purchasers who acquire munitions or handguns from out-of-state sellers would be required to report and pay the appropriate fee to the Board within 90 days of the purchase. The Board would be required to transmit fees collected to the Treasurer to be deposited in the State Treasury to the credit of the Firearm Victims' Reimbursement Fund, which this bill would create. The Firearm Victims' Reimbursement Fund may be used, upon appropriation by the Legislature, as follows:

- To the Board for its cost of implementation and administration of the fee. This amount may not exceed 10 percent of the total revenue deposited in the fund during the same fiscal year.
- To the California Victims Compensation and Government Claims Board for the board's cost of implementation and administration. This amount may not exceed 5 percent of the total revenue deposited in the fund during the same fiscal year.
- To pay claims as administered by the California Victims Compensation and Government Claims Board for compensating persons who are injured by firearms and who suffer an uncompensated financial loss. However, no person who is

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injured by a firearm while committing or attempting to commit a crime would be eligible for compensation.

This bill would provide that if the amount credited to the Firearm Victims' Reimbursement Fund exceeds the amount necessary to cover administration costs and pay claims for uncompensated costs of firearm injuries, the Board shall temporarily adjust for the following one year period, the fee to be charged on the retail sale of munitions and handguns to an amount estimated to deplete any surplus in the fund during the next calendar year.

This bill would provide that the Board shall adopt regulations necessary to implement the provisions of this bill.

Background

In 1993, two bills (AB 856, Tucker and SB 1129, Roberti) were introduced which would have imposed an additional sales tax on both firearms and ammunition. Both failed to advance out of their house of origin.

In 1994, SB 42X (Hughes) would have imposed a 10 percent sales tax on ammunition, while AB 24X (Eastin) and AB 3076 (Bates) proposed an excise tax of 15 cents per round of ammunition. All three bills failed to advance out of their house of origin.

Senate Constitutional Amendment 12 (Perata), introduced during the 2002 Legislative Session, would have placed a constitutional amendment before voters to impose a tax upon retailers at the rate of 5 cents for each munition sold at retail in this state. SCA 12 failed passage in the Senate Revenue and Taxation Committee.

Assembly Bill 992 (Ridley-Thomas), introduced during the 2003 Legislative Session, would have imposed a fee of 10 cents on each munition sold at retail. AB 992 failed to advance out of its house of origin.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to provide funding to offset financial losses incurred by firearm injury victims.
2. **Summary of amendments.** The April 22 amendments clarify that the proposed fee would be imposed upon the retailer, the exemption for peace officers would include handgun purchases by the peace officer or any government agency purchasing handguns or munitions on behalf of a law enforcement agency, and reimbursement of Board costs would be limited to 10 percent of the fee revenue. Additional amendments include technical provisions suggested in the previous Board staff analysis.
3. **Definition of handguns.** The proposed fee would apply to sales of handguns, as defined in Section 12001. Section 12001 defines a handgun as any pistol, revolver or firearm capable of being concealed upon the person and has a barrel less than 16 inches in length. This would exclude rifles and shotguns from the proposed fee.
4. **Exemption.** This bill would allow an exemption from the fee for any munition or handgun purchased by a peace officer required to carry a firearm while on duty, or by any governmental law enforcement agency employing that officer, provided the munition or handgun is purchased for use in the normal course of employment. This bill would also allow an exemption for any ammunition purchased by a licensed

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hunter for use in a rifle or shotgun. It is unclear why the bill uses the term ammunition in subdivision (d)(2), while it uses the term munition throughout the rest of the bill.

This bill does not provide an exemption for handguns purchased by licensed hunters.

5. **Munitions fee would be subject to sales and use tax.** The proposed fee would be imposed upon the retailer. Sales and use tax is due based on the gross receipts or sales price of tangible personal property in this state. The proposed munitions and handgun fees would not be specifically excluded from gross receipts or sales price, so it would be included in the amount on which sales or use tax is computed.
6. **Costs may exceed revenue.** This bill would create a new fee program to be administered by the Board. The provisions in this bill provide that the Board would be reimbursed for the costs of implementation and administration through the revenues generated by the fee, but the reimbursement of costs may not exceed 10 percent of the total revenue in the same fiscal year. The Board estimates annual revenue generated by the proposed fee to be \$3.3 million. Based on this annual revenue amount, reimbursement of Board costs would be limited to \$330,000 annually (\$3.3 million x 10 percent). Although the implementation and administration costs have not been estimated by the Board, it is highly unlikely that the revenue generated from the proposed fee will provide sufficient funding to cover Board costs.
7. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2005, which is in the middle of the state's fiscal year. Although this bill provides that the Board would be reimbursed for administration of the proposed fee from the fee revenues, in order to begin to develop the feepayer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2004-05 budget.
8. **Board would be required to adjust the fee.** This bill provides that the proposed fee would be 10 percent of the retail sales price of munitions and 5 percent of the retail sale price of handguns. This bill also provides that if amounts credited to the Firearm Victims' Reimbursement Fund (Fund) exceed the amount necessary to pay claims for which the Fund is established, the Board shall temporarily adjust, for the following one year period, the fee to be charged on the retail sale of munitions and handguns so that any surplus in the Fund would be depleted during the next calendar year. The bill does not provide how the adjustment to the fee should be allocated between the two fees (munitions and handguns) and the bill does not indicate on what date the Board must make this determination. However, this bill does provide that the Board shall adopt regulations necessary to implement the provisions in this bill.
9. **Bill could set a precedent.** Imposing varying fees on specific commodities complicates tax administration and could set a precedent for establishing multiple fees on other classes of tangible personal property. This results in increasing administrative costs to the Board and an increased record-keeping burden on fee payers.

10. **Suggested technical amendment.** The terms “retail sale” and “retailer” are not defined in this bill. Lack of definitions for these key terms could lead to confusion. It is recommended that the bill be amended to add the following:

(c)(3) For purposes of this section, “retail sale” has the same meaning as provided in Section 6007 of the Revenue and Taxation Code.

(4) For purposes of this section, “retailer” has the same meaning as provided in Section 6015 of the Revenue and Taxation Code.

11. **The Board could not administer a new fee program with a January 1, 2005, effective date without risk to its Revenue Database Consolidation (RDC) Project.** Since April 2004 and running through the remainder of the 2004 calendar year, the Board is implementing the RDC project. RDC involves extensive changes to the Integrated Revenue Information System (IRIS), the Board’s primary tax administration system. RDC implementation and stabilization efforts will occupy significant Board staff resources for the rest of 2004.

The Board has already made significant modifications to the RDC project as a result of two major pieces of legislation signed into law* in 2003. Making such modifications to the RDC code is a very challenging and cumbersome process.

This bill would create a new fee program as of January 1, 2005. This would require programming to the Board’s computer system at the end of 2004, which is during the final stages of the RDC project. Making modifications at the end of the system development, which this bill would require, would put the Board’s RDC project at substantial risk. Because of this risk, the Board can not add a new tax or fee program to its system until early 2005. It is therefore suggested that the bill be amended to make the fee operative *no earlier* than July 1, 2005.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include identifying and registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

This bill would impose a fee of 10 percent upon all munitions sold at retail and a fee of 5 percent upon all handguns sold at retail. This bill exempts from those fees munitions and handguns purchased by any peace officer required to carry a firearm while on duty, or by any governmental law enforcement agency employing that officer, for use in the normal course of employment. Also exempt from the ammunition fees are purchasers who have a valid California hunting license and are purchasing munitions for use in rifles and shotguns. Hunters are not exempt from the fees on handguns.

* AB 71 (Stats. 2003, Ch. 890) and SB 1049 (Stats. 2003, Ch. 741)

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According to the National Sporting Goods Association (NSGA), total sales of munitions in California for 2002 are estimated to be \$100.6 million. Total sales of handguns are estimated to be \$55.4 million. According to the 2001 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, and according to the corresponding NSGA 2001 data, munitions purchased by hunters comprise 82 percent of all munitions sales.

Law enforcement agencies in the state use munitions in varying amounts. A survey of some of those agencies determined that sales of munitions to police and police agencies are estimated to be 10 percent of all munitions sales. Additionally, it is estimated that police and police agencies purchases comprise 10 percent of all handgun sales. The following table shows total sales subject to the fees.

Product	Calif. Sales	Sales: Hunters	Sales: Police	Sales Subject to Fee	Est. Fees @ 10% and 5%
(in millions)					
Ammunition	\$100.6	\$82.5	\$10.1	\$8.0	\$0.8
Handguns	\$55.4	N/A	\$5.5	\$49.9	\$2.5
Total					<u>\$3.3</u>

Additionally, this fee would be subject to the sales and use tax. The additional annual sales and use tax revenue is estimated as follows:

State (5.25%)	\$ 173,000
Local (2.0%)	66,000
Special District (0.67%)	22,000
Total	<u>\$261,000</u>

Revenue Summary

The annual revenue from imposing a fee on munitions and handgun sales is estimated to be \$3.3 million (\$0.8 million + \$2.5 million). The additional annual sales and use tax revenue from the proposed fee is estimated to be \$261,000.

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